

Department of State

§ 20.5

(2) A former spouse of a disability annuitant is entitled to a share of benefits to which the annuitant would qualify under paragraph (a) of this section, he or she not been disabled based on the actual age and service of the annuitant.

(b) *Share.* The share of a participant's benefits to which a qualified former spouse is entitled is—

(1) 50 percent of the benefits described in §20.4(a) if the former spouse was married to the participant throughout the latter's creditable service; or

(2) A pro rata share of 50 percent of such benefits if the former spouse was not married to the participant throughout such creditable service.

(c) *Reduction of benefits.* If retirement benefits of a principal are reduced because of reemployment, attainment of eligibility for Social Security benefits or for any other reason, the amount of the share payable to a former spouse is correspondingly reduced during the period of the reduction.

(d) *Commencement, Termination and Suspension.* (1) Entitlement to retirement benefits under this section (except for a former spouse of a disability annuitant) shall commence on the latter of—

(i) The day the principal becomes entitled to benefits described in §20.4(a); or

(ii) December 22, 1987.

(2) Entitlement to retirement benefits under this section for a former spouse of a disability annuitant shall commence on the latter of—

(i) The date the principal would qualify for benefits (other than a disability annuity) described in §20.4(a) on the basis of the principal's actual age and service;

(ii) The date the disability annuity begins; or

(iii) December 22, 1987.

(3) Entitlement to retirement benefits under this section shall terminate or be suspended on the earlier of—

(i) Last day of the month before the former spouse dies or remarries before attaining age 55;

(ii) Date benefits of the principal terminate or are suspended because of death, recall, reemployment, recovery from disability or for any other reason.

(4) Entitlement to benefits under this section shall be resumed for a former spouse, following their suspension, or the date they are resumed for the principal.

§20.5 Survivor benefits.

(a) *Type of benefits.* A former spouse who meets the eligibility requirements of §20.3 is entitled to survivor benefits equal to one of the following; whichever is applicable:

(1) 55 percent of the full annuity to which the principal was entitled on the commencement or recomputation date of the annuity in the case of a principal who dies while in receipt of a Foreign Service annuity computed under section 806, 808, 823, 824, or 855 of the Act of 5 U.S.C. 8415;

(2) 55 percent of the annuity to which the principal was entitled at death in the case of a principal who dies while in receipt of a Foreign Service annuity computed under 5 U.S.C. 8452;

(3) 55 percent of the full annuity to which the principal would have been entitled if he or she retired (or returned to retirement status) on the date of death computed—depending on the provision that would be used to compute an annuity for a surviving spouse of the principal—under section 806(a), 823, 824, or 855(b) of the Act of 5 U.S.C. 8415 and using the actual service of the principal, in the case of a principal who dies while in active service, including service on recall or reemployment while annuity is suspended or reduced; or,

(4) 55 percent of the full annuity computed under 5 U.S.C. 8413(b) that the principal could have elected to receive commencing on the date of death or, if later, commencing on the date the principal would have attained the minimum retirement age described in 5 U.S.C. 8412(h), in the case of a principal while entitled to a deferred annuity under 5 U.S.C. 8413(b), but before commencement of that annuity. A survivor annuity under this paragraph may not commence before the date the principal would have attained the minimum retirement age.

(b) *Effect of Election of Alternate Form Annuity.* If a principal elects an alternate form annuity under section 829 of

the Act or 5 U.S.C. 8420a, survivor benefits for a former spouse under this section shall, nevertheless, be based on what the principal's annuity would have been had the principal not withdrawn retirement contributions in a lump sum.

(c) *Reduction Because of Receipt of Other Survivor Benefits.* If a former spouse is in receipt of a survivor annuity based on an election by the principal under section 806(f) or 2109 of the Act, the survivor benefits for the former spouse under this section shall be reduced on the effective date by the amount of such elected survivor annuity.

(d) *Commencement and Termination.* Entitlement to survivor benefits under this section—

- (1) Shall commence on the latter of—
 - (i) The date the principal dies;
 - (ii) December 22, 1987; and

(2) Shall terminate on the last day of the month before the former spouse dies or remarries before attaining age 55.

§ 20.6 COLA.

(a) *Retirement Benefits.* A retirement annuity payable to a former spouse under § 20.4 is adjusted for cost-of-living increases under section 826 or 858 of the Act in the same manner as the annuity of the principal. The first such increase for a former spouse shall be prorated under the applicable section in the same way the first increase for the principal is adjusted, irrespective of whether the annuity to the former spouse commences on the same date as the annuity to the principal. If the benefit of a former spouse is based in part on an annuity supplement payable to a principal under 5 U.S.C. 8421 which is not adjusted by COLA, then that portion of the benefit payable to a former spouse is not adjusted by COLA.

(b) *Survivor Benefits.* (1) Survivor annuities payable to a former spouse are adjusted for COLA under section 826 or 858 of the Act in the same manner as annuities are or would be adjusted for other survivors of the principal.

(2) A survivor annuity payable to a former spouse under § 20.5-1(A) shall be increased from its commencing date pursuant to paragraph (c)(2) of section 826 of the Act or 8462 of Title 5, U.S.

Code, by all COLA received by the principal at death, irrespective of the date of death and in instances where death occurred prior to December 22, 1987, by all COLA that would have been paid to a survivor annuitant from the date of death until December 22, 1987.

(3) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(2) shall be prorated pursuant to 5 U.S.C. 8462(c)(4).

(4) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(3) or

(5) Shall be prorated pursuant to paragraph (c)(1) of section 826 of the Act or 8462 or title 5, U.S. Code.

§ 20.7 Waiver.

A former spouse entitled to an annuity under this part may decide to decline all or any part of the annuity for personal reasons. An annuity waiver shall be in writing and sent to the Retirement Division (PER/ER/RET), Department of State, Washington, DC 20520. A waiver may be revoked in writing at any time. Payment of the annuity waived prior to receipt by the Retirement Division of the renovation may not be made.

§ 20.8 Effect on other benefits.

Payment to a former spouse under this part shall not impair, reduce, or otherwise affect benefits paid under the Act to the principal or other persons.

§ 20.9 Application procedure.

(a) *Submission of Application.* To be eligible for retirement or survivor benefits under this part, a former spouse must submit a properly executed and completed application to the Department of State by June 22, 1990 or, if an exception is made for compelling cause to this deadline, within 60 days following the date of the letter from the Department transmitting the application to the former spouse. The application must be delivered or mailed to the Retirement Division (PER/ER/RET), Room 1251, Department of State, Washington, DC 20520.

(b) *Request for Application.* The Department of State has attempted to mail applications to all former spouses